

The February 4, 2015 meeting of the Walpole Zoning Board of Appeals was held in Room 112 of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 7:08 p.m. with the following members present:

Matthew Zuker, Chairman
James DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, (not present)
Susanne Murphy, Member (not present)
Timothy Foley, Associate Member

7:00 pm – Edwin Barr – Case #21-14

Matthew Zuker read the Public Hearing notice for **EDWIN BARR, Case #21-14**, with respect to property located at 134 Common Street, Walpole, MA and shown on the Assessors Map 33 and Lot No. 86, General Residence Zoning District.

The application is for:

A SPECIAL PERMIT from Section 5-B.3F of the Zoning Bylaws to allow the conversion of a single family to a two family home.

Edwin Barr of 134 Common Street stated that he purchased the property a little over a year ago. He is here to request a Special Permit to change his single family home to a two family home. He asked the Board to look at the plan labeled “134 Common Street Current First Floor” this plan shows the addition that was built in 1985. The addition is connected by a hallway to create an in-law apartment suite. The applicant stated that he would like to divide this space into 2 units. They have shared electrical and shared gas. He will separate them with a firewall to make it legal. He mentioned that he spoke with the fire department and received permission to address these units separately.

Mr. Zuker explained that after the applicant submitted his original application, the Fire Department noted that the applicant’s original plans were confusing so the applicant submitted new plans. Mr. Zuker stated that he is struggling with where the firewall will be located between the units.

(Mr. Barr drew on Mr. Zuker’s plan where the firewall would be)

Mr. Barr mentioned that this would be a one floor apartment.

Mr. DeCelle asked what the outside change to the property would be.

The applicant stated that there will be no changes to the outside. When the in-law apartment was originally built this was the footprint of the house.

Mr. Hiltz asked if there is a basement under the porch.

The applicant stated that part of it is a basement. It is strange; they poured a foundation that comes half way up this covered porch. Then they installed a cinderblock foundation.

Mr. DeCelle asked if the applicant has any profiles on the property. He asked the applicant if he was taking the in-law and making it a legal two family.

Mr. Barr handed the board the profiles and stated that yes he wants to make the property a legal two-family home.

Mr. Zuker stated that there are two criteria that need to be met: 1.) The lot needs to be over 20,000 Square Feet and 2.) The property needs to be connected to public sewer.

Mr. DeCelle noted that the property is currently a pre-existing, non-conforming lot.

Mr. Hiltz said if we grant this permit we would make it conforming.

Mr. DeCelle asked if you have a preexisting, non-conforming lot and try to do something not allowed by right, do you need a variance for the frontage?

Mr. Hiltz felt that it is a permitted use, not by right but by special permit.

Mr. Zuker asked if it would be a special permit or a use variance.

Mr. Hiltz stated use is permitted under special permit. In a Residential zone it is not permitted, he would need a variance but in a general residence it is permitted albeit with a special permit, even though it is on a non-conforming lot.

Mr. DeCelle said that it is not allowed by right but allowed by special permit. What is the difference?

Mr. Hiltz stated that the board can factor that into their decision. Even though it is on a preexisting non-conforming lot, it doesn't hamper or affect the use of the property.

Mr. DeCelle noted that the applicant is not making any exterior changes, except for the stairs.

Mr. Zuker asked if the applicant was hooked up to the town sewer.

The Applicant stated yes to both questions.

Mr. DeCelle wanted to know if the property had any wetlands.

Mr. Barr stated that out back there are some wetlands.

Mr. Hiltz asked if there were any other multifamily homes in the applicant's neighborhood.

The Applicant said that the house right next to his house is a multi-family. There are also a couple of multifamily homes right across the street and a few more in the area.

Mr. Hiltz asked if there will be enough space for parking.

The Applicant stated that there is an oversized driveway with plenty of spots for parking. There is also available parking on the street. The plans I submitted I show additional parking.

Mr. Hiltz asked two spots per unit?

The Applicant stated yes. If I remember correctly, the number of bedrooms drives the number of parking spots. The applicant stated that he has 3 bedrooms in the unit and three bedrooms in the main house.

Mr. DeCelle said that the applicant has three bedrooms, a living room and a dining room on the back. In the new unit you are planning to have three bedrooms and a bathroom, then minor changes to connect the two? I don't want to see the house going up.

Mr. Hiltz stated we resolve it by putting in a condition that he files a copy with the building permit in the records. The only alterations are in the porch and bathroom area.

Mr. DeCelle explained that there is a house on Common Street that came before the Board previously. The house looks nothing like the applicant said it was going to look.

Mr. Zuker read in the comments from the Fire Department, Town Engineer, Building Inspector, Planning Board, Police Department and Conservation Commission. Mr. Zuker stated that the Fire Department said: Board of Appeals, I had the opportunity to conduct a site visit to this location and meet personally with Mr. Barr. My initial concern was that the provided plans did not show a second kitchen, not did it show a second floor plan for said occupancy. Currently this two-story residential home has a single story in-law addition off the back of the home. Mr. Barr is looking to separate this in-law addition from the main home to make a two family home. I informed Mr. Barr that the submitted plans were somewhat confusing and that he may want to update these plans to include the following: identification of the existing second kitchen on the 1st floor, identification of separation wall between each unit, identification indication single level on read addition and identification showing a second floor on 134 Common Street. It was my intent to clarify this application so that others would not have the same questions, which could delay the Boards vote. The Fire Departments concerns were related to Kristine Brown who was going to contact Mr. Barr to request these corrections. After conducting a site visit the fire department supports this request to make the existing single family, with in-law apartment, into a two family house. The applicant submitted new plans that the Fire Department reviewed to which they said: Mr. Barr updated the plans to address my concern, which was to clarify the separation of each unit. The plans appear to be sufficient and I believe his attached letter adequately identifies that there is a second floor over the existing main house. Also, in regards to the address of the second unit, if approved by your Board, this address should be 136 Common-not 138 Common as identified on the plans. I did review this address with the Towns 911 Municipal Coordinator, Captain Smith, and he agreed. So, to clarify, the existing home

would remain 134 Common and the 2nd unit would have an address of 136 Common Street. If you have any further questions please do not hesitate to contact me.

Mr. Zuker stated that in general this application is pretty light in terms of the plans we have to look at. We have a standard of what we require from everyone. I do not have a problem with the proposal.

Mr. DeCelle said the problem isn't this project but the next project that comes before the board.

Mr. Zuker stated that the plans do not show the 4 parking spaces you need by code. We can tie it in the conditions. We could easily say build according to the plans. It is not the Boards standard approach but I'm OK with it.

Mr. Hiltz stated he would be comfortable conditioning it.

Mr. Zuker asked if any members of the public wished to comment on the proposal. No members of the public wished to speak.

A motion was made by Mr. DeCelle, seconded by Mr. Zuker, to close the public hearing.

The vote was **4-0-0 in favor**. (Zuker, DeCelle, Hiltz and Foley voting)

A motion was made by Mr. Hiltz, seconded by Mr. Foley, on behalf of the applicant, to approve a Special Permit from Section 5-B.3F of the Zoning Bylaw to allow the conversion of a single family to a two family home.

The vote was **4-0-0** in favor (Zuker, DeCelle, Hiltz, and Foley voting); therefore the application for a **Special Permit** under Section 5-B.3F is hereby **granted**, subject to the following conditions:

CONDITIONS:

1. As stipulated by the applicant at the public hearing, no exterior alterations except the secondary egress that is required.
2. As stipulated by the applicant at the public hearing, the total number of bedrooms will be 6.
3. As stipulated by the applicant at the public hearing, no changes to the second floor and no structural changes to the first floor beyond the covered porch and adjacent bathroom area as presented at the public hearing unless it is required by the Building Code.
4. As stipulated by the applicant at the public hearing, the applicant must supply a plan to the Building Inspector to include the required spaces shown on the plan, verify with the Building Inspector that there are 4 spaces and submit a copy of that plan to the Zoning Board.

5. As stipulated by the applicant at the public hearing, this Special Permit is based on the lot as presented at the public hearing and will not be further subdivided without further action of the Board.
6. As stipulated by the applicant at the public hearing there shall be no cones of light shining on adjacent property.

REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaw, which requires that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;

As discussed above, the proposed work complies with the special permit provisions of Section 5-B.3.f of the Zoning Bylaw. The proposed project meets the 2 criteria, it is over 20,000 square feet and it is connected to town sewer.

(b) Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the proposed construction of a two-family dwelling will not significantly increase vehicular or pedestrian traffic and this requirement is therefore met.

(c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;

The Board finds that the proposed construction of a two-family dwelling will not result in a significant increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site) and this requirement is therefore met.

(d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that the proposed structure meets the various dimensional requirements of the Zoning Bylaw including lot coverage and that this criterion is therefore met. There are no buffer zone requirements associated with this use.

(e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that two-family residential uses are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. As such, the Board finds that this criterion is met.

(f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that two-family residential uses are not known to be typically associated with noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. As such, the Board finds that this criterion is met.

(g) Shall not adversely effect the character of the immediate neighborhood; and

The Board finds that the property in question lies within an area with other two-family residential houses and that the proposed structure is reasonable for the neighborhood. The Board therefore finds that this criterion is met.

(h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the proposed two-family residential structure is appropriate for the General Residence zone, where two-family residential uses are allowed by Special Permit. As such, the Board finds that this criterion is met.

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The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

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7:00 pm – Habib Mourad of H & J Washington, LLC – Case #1-15

Matthew Zuker read the Public Hearing notice for **Habib Mourad of H & J Washington, LLC, Case #1-15**, with respect to property located at 346-348 Washington Street, Walpole, MA and shown on the Assessors Map 27 and Lot No. 46, General Residence Zoning District.

The application is for:

A Special Permit under Section 5-B.3.i of the Zoning Bylaws to allow use for a resident Beautician, AKA Cosmetologist and allowable uses per section.

Mr. Zuker then read the email that the applicant’s attorney supplied: Board, As Counsel for and on behalf of the Applicant Habib Mourad of H & J Washington, LLC is respectfully requested that the hearing scheduled this evening be continues until February 25th due to the lack of full compliment of members. As such I ask that the hearing be opened without testimony being taken and suspended until February 25th. Thank your for your considerations in this request. Phil Macchi II

Mr. Zuker asked if anyone had any request for this continuance.

The Board mentioned that they were disappointed that the applicant did not appear. They would have liked the opportunity to ask questions.

A motion was made by Mr. Zuker, seconded by Mr. Hiltz, to continue the hearing to February 25, 2015 at 7:00 p.m.

The vote was **3-1-0 in favor.** (Zuker, Hiltz & Foley voting in favor; DeCelle voting in opposition)

7:00 pm – Leigh Ann Luetzen, Trustee of LA Realty Trust – Case #20-14

Mr. Zuker read the Public Hearing notice for **Leigh Ann Luetzen, Trustee of LA Realty Trust, Case #20-14**, with respect to property located at 119 Pleasant Street, East Walpole, MA and shown on the Assessors Map 20 and Lot No. 194, General Residence Zoning District.

The application is for:

A SPECIAL PERMIT under Section 5.B.3. Residential c. of the Zoning Bylaws to allow a conversion of a non-conforming one family dwelling to a three family dwelling.

A SPECIAL PERMIT under Section 9.4.A-C, if determined applicable, to allow the conversion of a non-conforming one family dwelling to a three family dwelling on a grandfathered lot all as shown on a Plan entitled “119 Pleasant Street, Plan of Land in Walpole, MA” dated May 15, 2014 as last amended on November 3, 2014. Scale 1”=20’ drawn by Andrew C. Murphy, P.L.S., 9 Off Grove Street, Weymouth, MA 02189 and the proposed floor plans submitted with the application.

Mr. Zuker then read an email that the applicant’s attorney submitted: Board: As counsel for and on behalf of the Applicant LA Trust it is respectfully requested that the hearing scheduled this evening be continued until February 25th due to the lack of a full compliment of members. As such I ask that the hearing be opened without testimony being taken and suspended until February 25th. Thank you for your considerations in this request. Phil Macchi.

Mr. Hiltz noted that Jack Conroy approached him at the gym to let him know that his daughter would be filing an application.

The Board felt that they adopted the Mullin Rule for the public so they would not run the risk of a non-majority.

Mr. Zuker noted that technically the Board has a quorum tonight.

Both Mr. Hiltz and Mr. Foley stated that if the Board had the entire neighborhood at the Public Hearing then it would be difficult to just to continue the case. They mentioned that they would have a problem with that.

Mr. Zuker said that he does not like giving continuances to applicants who are just asking for a continuance for member availability.

A motion was made by Mr. Zuker, seconded by Mr. Hiltz, to continue the hearing to February 25, 2015 at 7:00 p.m.

The vote was **3-1-0 in favor** (Zuker, Hiltz & Foley voting in favor; DeCelle voting in opposition).

Minutes

A motion was made by Mr. Hiltz, seconded by Mr. Zuker to approve the January 7, 2015 meeting minutes as written.

The vote was **4-0-0 in favor**. (Zuker, DeCelle, Hiltz and Foley voting)

A motion was made by Mr. DeCelle, seconded by Mr. Foley to adjourn the meeting at 8: 28 p.m.

The vote was **4-0-0 in favor**. (Zuker, DeCelle, Hiltz, and Foley voting)

Craig W. Hiltz
Clerk

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Minutes were approved on February 25, 2015.